



bay restoration commission

STEWARDS OF SANTA MONICA BAY

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June 8, 2011

Agenda Item #8

To: Governing Board, SMBRC
From: Scott Valor, Director of Government Affairs
Subject: Draft Public Comment Policy

Action Requested of the Governing Board:

- Review and approve the most current draft public comment policy.

Update After Governing Board Review at April 21, 2011 Meeting

The attached Draft Public Comment Policy reflects changes suggested by Governing Board members at the April 21, 2011 meeting *and changes made by State Water Resources Control Board legal counsel*. Upon deliberation, the Governing Board agreed to put the draft policy over to the next meeting in order to re-draft and reconsider the policy with suggested changes. Note that all changes are consistent with or restate existing law and are designed for clarification. Specific changes include the following:

- Providing less formal/more welcoming language in Section 1 and clarifying the type of comment members of the public are permitted to give.
- Expanding and clarifying Section 5 to state that Governing Board members may comment or ask questions of the Chair, staff, or members of the public following a public comment.
- Adding a new Section 6 that authorizes the submission of written comments by members of the public.
- Adding a new Section 7 that clarifies that public commentators may choose to speak anonymously.
- Adding a new Section 8 stating that public criticism of Commission policies, etc., will not be prohibited.

Governing Board members also requested that any new policy be printed on the back of speaker cards that will be used for public comment at meetings.

Some Governing Board members questioned whether the proposed policy limits the public's ability to address the Commission. However, as noted, in the Background discussion below (re-printed from the April 21, 2011 meeting staff report), the policy is intended to *re-state what is authorized under existing law and note the discretion of*

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the Governing Board and Chair to either expand or limit public comment, as deemed necessary.

This draft policy cannot grant powers to the Governing Board not already authorized by existing state law, nor can it take existing rights away from the public. The Bagley-Keene Open Meeting Act provides for full public participation while respecting the needs of the state body to deliberate in an orderly and timely fashion.

Questions were also raised regarding the time limits placed on public comments in Section 4. State Water Board legal counsel suggested eliminating a specific time limit because it is already within the chair's discretion to do so. Without a specified maximum time limit the chair may institute one based on the circumstances of a particular meeting. *The ability to limit or extend public comment is expressly stated in state law (see Cal. Gov't Code section 11125.7 (b)). The purpose of allowing a limit is to ensure that no single individual dominates public comment at the expense of other members of the public or hinders the Governing Board's ability to deliberate.*

Conversely, the chair has the discretion to *extend* public comment from one or more individuals as he or she sees fit.

Background (Re-printed from April 21, 2011 Staff Report)

The Bagley-Keene Open Meeting Act (Cal. Gov't Code sections 11120-11132), which covers all state boards and commissions, applies to all SMBRC meetings and is designed to ensure adequate public notice of and participation in those meetings, among other things. A key portion of Bagley-Keene expressly ensures public participation by directly prohibiting any conditions on public attendance at the meeting (section 11124) and expressly allows for members of the public to record, video, and broadcast the meetings, unless doing so would disrupt the proceedings (section 11124.1).

Bagley-Keene states that members of the public are allowed to speak on any agenda item, either before or during the consideration of that item (section 11125.7). It also allows Governing Board members to comment on issues raised by public commentators, but does not authorize the Board to act on matters not on the agenda. However, Bagley-Keene does recognize the need for meetings to be run in an orderly and efficient way, so it does authorize the meeting body to adopt reasonable regulations on public comment, including limiting the time for comment on particular issues and for each individual speaker (section 11125.7 (b)).

In recent months, the Governing Board has experienced a higher volume of public comment than it has in the past. This volume isn't expected to decrease in the near future. As a result, various Governing Board members have asked for clarification regarding the extent of public comment, the right of Governing Board members to ask questions during public comment, and also to what extent public comment is allowed on a particular item.



The draft public comment policy is designed to comply with the letter and spirit of Bagley-Keene, while establishing specific, written guidelines for public comment that both the Governing Board and members of the public can review and understand. The goal is to create a predictable public comment period that meets the expectations of both the Board and the general public.

Both the *original* draft public comment policy and the draft *with Governing Board and State Water Board legal counsel revisions* are attached.



DRAFT SMBRC Public Comment Policy
(Pursuant to input from the April 21, 2011 Governing Board Meeting
And Review by SWRCB Legal Counsel)

1. Pursuant to the Bagley-Keene Open Meeting Law, public testimony is generally permitted on all agenda items. In addition, the agendas for the meetings of the Commission's bodies allow an opportunity for members of the public to address the body on issues that are not on the agenda, but are within the jurisdiction of the body. If the agenda contains such a specified "Public Comment" agenda item, the public shall have an opportunity to comment on any matter which is not on the agenda, but is within the Commission's jurisdiction. When a particular agenda item (other than "Public Comment") is under discussion, testimony by members of the public must be within the scope of that agenda item. Testimony outside the scope of, or unrelated to that agenda item, is not authorized.
2. Any member of the public wishing to address the Commission's Governing Board, Executive Committee, Bay Watershed Council, or any other bodies created by the Commission regarding an item on the agenda for public discussion shall submit a speaker card prior to the start of the meeting, if possible, but no later than the commencement of that item. Any request received after the start of the agenda item shall be considered late and may only be heard with the Chair's approval.
3. After being recognized by the Chair, each member of the public addressing the Governing Board, Executive Committee, Bay Watershed Council, or any other bodies created by the Commission shall be asked to state his or her name and whom he or she is representing, if he or she represents an organization or other person. All remarks shall be addressed to the Governing Board as a whole and not to any individual member thereof. After the public comment portion on a particular item has been closed, no member of the public shall address the Governing Board on the matter under consideration without first securing the Chair's approval.
4. Members of the public shall generally limit their remarks to three minutes per agenda item unless the Governing Board grants additional time by majority vote. The Chair, at its discretion, may further limit the time for individual public comment based on the number of speakers, volume of agenda items, etc. Members of the public are strongly encouraged to avoid repetitive comments. If there are several members of the public who would like to address the same



issues, they may be asked to select a representative, who may be given additional time to present those issues.

5. Members of the Governing Board, Executive Committee, Bay Watershed Council, or other Commission bodies may, at the end of a particular member of the public's remarks, ask questions of the Chair, staff, or, through the Chair, that member of the public. Governing Board members may also make their own comments through the Chair.
6. Submission of written comments to the Governing Board is always welcome. Written comments shall include the name of the individual submitting the written materials and the entity that he or she is representing, if applicable.
7. The Commission's bodies will honor any requests for anonymity expressed by a member of the public who wishes to attend a meeting or address the body at a meeting.
8. The Commission's bodies will not prohibit public criticism of the policies, programs, or services of the body, or of the acts or omissions of the state body.



DRAFT SMBRC Public Comment Policy
(Original Draft)

1. Pursuant to the Bagley-Keene Open Meeting Law, public testimony is permitted on all agenda items and the public shall have an opportunity to comment on any matter which is not on the agenda, but is within the Commission's jurisdiction. However, members of the public do not have the right to give testimony outside the scope of, or unrelated to, an agenda item under consideration.
2. Any member of the public wishing to address the Commission's Governing Board regarding an item on the agenda for public discussion shall submit a speaker card prior to the start of the meeting, if possible, but no later than prior to the public hearing on that item. Any request received after the start of the hearing shall be considered late and may only be heard with the Governing Board's approval.
3. After being recognized by the Chair, each member of the public addressing the Governing Board shall state his or her name and whom he or she is representing, if he or she represents an organization or other person. All remarks shall be addressed to the Governing Board as a whole and not to any individual member thereof. After the public hearing on a particular item has been closed, no member of the public shall address the Governing Board on the matter under consideration without first securing the Governing Board's approval.
4. Members of the public shall limit their remarks to three minutes per agenda item unless the Governing Board grants additional time by majority vote. A person wishing to speak on more than one item shall limit his or her remarks to a total of six minutes per meeting, unless the Governing Board grants additional time by majority vote. The Governing Board, at its discretion, may further limit the time for individual public comment based on the number of speakers, volume of agenda items, etc.
5. Governing Board members may, at the end of a particular member of the public's remarks, ask questions of the Chair and/or staff, or make his or her own comments through the chair.